

EXHIBIT K

United States District Court
Southern District of Texas
FILED

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Michael NPMitty 1
Clerk of Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

IN RE:)	
)	CASE NO: MDL-03-1553
)	
)	Corpus Christi, Texas
SILICA PRODUCTS)	
LIABILITY LITIGATION)	Monday, August 22, 2005
)	(9:15 a.m. to 11:17 a.m.)
)	
)	
)	

STATUS CONFERENCE

BEFORE THE HONORABLE JANIS GRAHAM JACK,
UNITED STATES DISTRICT COURT JUDGE

Appearances: (See next page)

Proceedings recorded by electronic sound recording;
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Page 2

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Page 6

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Page 7

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1 Corpus Christi, Texas; Monday, August 22, 2005; 9:15 a.m.

2 (Call to Order)

3 THE COURT: Thank you. You may be seated.

4 I apologize for the delay.

5 THE CLERK: Court calls MDL 03-1553, In Re: Silica
6 Litigation.

7 May I have appearances, please?

8 MS. SNAPKA: Kathy Snapka, Plaintiff Liaison
9 Counsel. Present, your Honor.

10 MR. BARGER: Darrell Barger, Defense Liaison
11 Counsel. Present, your Honor.

12 THE COURT: Since you all have a copy of the agenda,
13 can you give me an update enough that there is a direct
14 communication with the Mississippi Supreme Court? Does anybody
15 have any heads up on that at all?

16 MR. KRUTZ: Good morning, your Honor.

17 THE COURT: Good morning.

18 MR. KRUTZ: The briefing was concluded on Friday, so
19 the petitions have all been briefed by all parties. It's in the
20 hands of the court, and that's all we know.

21 THE COURT: Okay.

22 MR. KRUTZ: Just as a heads up, your Honor, I think
23 the cases on Exhibit A under your present orders are to be
24 remanded August 30th.

25 THE COURT: Yes.

1 MR. KRUTZ: If by the end of this week we have not
2 heard from the Mississippi Supreme Court, we will be filing a
3 Motion for an additional 30 days.

4 THE COURT: Why thank you.

5 MR. HOOPER: Your Honor, Scott Hooper here.

6 To advise the Court, we've advised the Mississippi
7 Supreme Court that they should not proceed because under Title
8 28, United States Code, Section 1446(d), as long as this Court
9 intends to exert jurisdiction over those cases, the State Court
10 is barred from acting in those cases.

11 So it's to further the ends that the Defendants are
12 seeking.

13 THE COURT: Well, I don't know how they're going to
14 go with that after I've already said in my order I don't have
15 jurisdiction over them. And that will clear the way for them to
16 do whatever they want to do in the interest of efficiency, but I
17 understand your argument.

18 MR. HOOPER: Okay. Under 1446(d), though, as long
19 as this Court holds -- hold onto cases --

20 THE COURT: Save it for Mississippi. Thanks.

21 MR. HOOPER: Okay.

22 THE COURT: I got it. Thank you.

23 Next, the Motion to Remand and I think there are 12
24 -- well, I have 17 remaining cases. I have gone ahead and
25 dismissed Nix -- let me make sure I've got it right, no, sorry

Page 10

1 -- Thirsty, Crowe, Greer, Large yesterday, so I have 17 left
2 that are not covered by the last MDL Order.

3 Are the attorneys for Covey v. Union Pacific here?
4 I'm going to start backward.

5 MR. FABRY: Yes, your Honor. John Fabry for the
6 Plaintiffs in that case.

7 THE COURT: And the Defendants? Same Defendants?

8 MR. AVELINO: Your Honor, one additional Defendant
9 from the other MDL cases from St. Louis. I am Victor Avelino,
10 and I'm for Defendants Sphinx Adsorbents, who are not a
11 defendant in any other matter.

12 THE COURT: Thank you, sir.

13 Is there any contest about jurisdiction in that
14 case?

15 MR. AVELINO: I'm thought there was not, but I would
16 defer to John Fabry for any contacts with other MDL counsel.

17 MR. FABRY: No, your Honor.

18 THE COURT: Okay. Then at some point I'm going to
19 go through these that I have left and enter Scheduling Orders
20 for these cases that I still have.

21 Wilson versus 3M Company?

22 MR. MULLINS: This is Steve Mullins on behalf of the
23 Plaintiffs. I agree with opposing counsel. He asked the Court
24 to pass our Motions to Remain in all of the cases.

25 THE COURT: I'm sorry? I'm not going to pass on

Page 11

1 anything. If you filed them, I'm going to talk about them.

2 I understand that -- you represent the plaintiff?

3 MR. MULLINS: Yes. Yes, ma'am.

4 THE COURT: And the problem was that this case was
5 removed greater than a year after it was -- the first Defendant
6 was served; is that correct?

7 MR. MULLINS: I believe that is correct.

8 THE COURT: Does anybody contest that?

9 (No Audible Response)

10 Then if there are no objections, I'm going to remand
11 Wilson versus 3M.

12 Clay versus Pulmosan Safety Equipment Company.

13 MR. MANUEL: Yes, your Honor.

14 THE COURT: That has a Motion to Remand by 3M, which
15 I don't think you can do that, but --

16 MR. MANUEL: We don't think you can.

17 THE COURT: Well, I think I can take up jurisdiction
18 at any time, but I'm not sure that a Defendant can file a Motion
19 to Remand --

20 MR. MANUEL: Well, your Honor --

21 THE COURT: -- when the Defendants removed the case.

22 MR. MANUEL: Will Manuel on behalf of 3M. We filed
23 a Motion to Remand on several cases and it's actually come down
24 now to just a few cases because of either dismissals or --

25 THE COURT: And Knight and Clay, I think, are the

1 ones left.

2 MR. MANUEL: Knight and Clay are the two -- I think
3 that with regard to Thirsty, Greer, Moore, Large, and Crowe, I
4 understood your Honor to say this morning that you had dismissed
5 them. I know that there's a --

6 THE COURT: Oh, no, no, no, no.

7 MR. MANUEL: Oh.

8 THE COURT: I still have Thirsty, Greer, Large, and
9 Crowe. I'm taking them up one at a time.

10 MR. MANUEL: Okay. We've got a similar motion --

11 THE COURT: The rest of them have Motions to Remand
12 filed by the Plaintiffs.

13 MR. MANUEL: Correct. We've got a Motion to Remand
14 on with regard to Clay, Crowe, Large, Moore, Greer, and Thirsty.
15 We do note that we'd like to withdraw our Motion to Remand on
16 Knight because I've got an Order of Dismissal for 3M.

17 THE COURT: Well, that would be good.

18 Do you want to hand me that?

19 MR. MANUEL: Yes.

20 And we also have --

21 THE COURT: And that's the only Motion to Remand
22 pending.

23 MR. MANUEL: On those cases?

24 THE COURT: On Knight.

25 MR. MANUEL: On Knight, that's correct.

Page 13

1 THE COURT: So if you can hand me up -- Ms. Gano,
2 would you hand me that?

3 THE COURT RECORDER: Sure, your Honor.

4 (Pause)

5 THE COURT: And that is unopposed?

6 MR. MANUEL: Yes. The motion -- I mean, the Agreed
7 Order of Dismissal is unopposed, as to 3M on Knight.

8 THE COURT: Right.

9 MR. MANUEL: We also had a Motion to Remand 3M,
10 specifically, on Cole. We've also got an Agreed Order of
11 Dismissal for the entire Cole case, which would take care of
12 that Motion to Remand, if you --

13 THE COURT: Okay.

14 MR. MANUEL: Would you like me to hand that to your
15 Honor?

16 THE COURT: Yes, please. Is that entire case is
17 gone -- will be gone, then?

18 MR. MANUEL: That entire case will be dismissed
19 without prejudice, your Honor.

20 So, your Honor, as far as 3M's Motion to Remand, we
21 ended up covering Thirsty, Greer, Moore, Large, Crowe --

22 THE COURT: And Clay is left.

23 MR. MANUEL: -- and Clay.

24 THE COURT: All of them but Clay had Motions to
25 Remand by the Plaintiff.

Page 14

1 MR. MANUEL: As well.

2 THE COURT: Yes.

3 MR. MANUEL: That is correct. That is correct.

4 With regard to Clay, we would just reargue again --
5 if you'd like to hear my argument on the Motion to Remand on
6 Clay?

7 THE COURT: Who is the Plaintiff's Attorney in Clay?

8 MR. SMITH: I am, your Honor, Allen Smith.

9 THE COURT: Did you intend to file -- I guess
10 procedurally it's too late for you to file a Motion to Remand.

11 MR. SMITH: No, your Honor. I didn't intend to file
12 a motion.

13 THE COURT: Did 3M join in the removal?

14 MR. MANUEL: Of Clay? I'd have to check. I'm not
15 sure if we did because that was one of the later removed cases
16 after we had already gotten here. But --

17 MR. KRUTZ: Your Honor, and we oppose -- the
18 Defendants that we represent oppose 3M's Motion to Remand.

19 THE COURT: Did anyone -- well, who removed the
20 case?

21 MR. KRUTZ: We did.

22 THE COURT: You did? Did 3M join you in the
23 removal?

24 MR. KRUTZ: We'd have to check.

25 THE COURT: Pardon?

Page 15

1 MR. HANNULA: We'd have to check, your Honor. I
2 don't know.

3 THE COURT: Well, this would be the time to check.

4 MR. MANUEL: Your Honor, if we -- I can make my
5 argument very briefly whether we -- and your Honor can take it
6 under consideration with regard to whether we joined or we did
7 not join, but --

8 THE COURT: Well, do you know whether you joined or
9 didn't join?

10 MR. MANUEL: If we joined, we would have joined
11 within the 30 days because we're pretty good rule followers on
12 that issue.

13 THE COURT: Well, then how do you get to file a
14 Motion to Remand, if you joined in the removal?

15 MR. MANUEL: Well, your Honor, we would argue
16 that --

17 THE COURT: Do you have any case law on this?

18 MR. MANUEL: I don't have any case law on that
19 issue, but I can get some case law on that issue.

20 THE COURT: You can?

21 MR. MANUEL: Not today, but I can -- I'd be willing
22 to file a Supplemental Brief on that issue.

23 THE COURT: Okay.

24 MR. MANUEL: We filed our Motion to Remand --

25 THE COURT: Go ahead. Take a second. Write it down

1 and then --

2 MR. MANUEL: Okay. I am. I'll just write it down
3 and remember it.

4 We filed our Motion to Remand on Clay, as well as we
5 did on the other cases on the exact same grounds and so in the
6 interest of making things quick --

7 THE COURT: Go ahead.

8 MR. MANUEL: -- I'd like to just go ahead and make
9 those arguments.

10 Clay is a single plaintiff case. The Thirsty,
11 Greer, Moore, Large, and Crowe cases are multiple plaintiff
12 cases, but I've been informed that the Plaintiff's lawyers are
13 considering dismissing almost a 136 plaintiffs out of that --
14 those first five cases, the Thirsty, Greer, Moore, Large, and
15 Crowe, but that still leaves some plaintiffs that are either the
16 subject of a Motion to Substitute Counsel or may still be
17 retained with the original counsel.

18 What we're talking about here is the Court is well
19 aware of the jurisdictional inquiry that you made in Order 29,
20 which is 3M were the people that provided the Fact Sheets and
21 said that with regard to this Court's Orders 4 and Order 6 in
22 which the parties agreed that they would look at the Fact Sheets
23 as an attempt to figure out where they had factual claims -- the
24 Plaintiffs had factual claims against the Defendants, that is
25 where the analysis can be done and that the primary motivated

1 purpose behind those orders was to clarify the particular
2 Defendants against who each Plaintiff asserts a claim.

3 And the Court clearly said that if those Fact Sheets
4 showed that one of those Plaintiffs had a claim against a non-
5 diverse Defendant, then that case ought to be remanded. And we
6 went back and looked at those Fact Sheets with regards to these
7 later filed cases, we came down to first off, finding 64
8 Plaintiffs that either failed to file a Fact Sheet at all or
9 failed to complete a Fact Sheet. They may have one, but it
10 wasn't completed.

11 And you know, your Honor, dealt with that in Order
12 29, in which you said, "Because we don't have any information,
13 then it's the Defendant's burden to show jurisdiction. That the
14 assumption is that there is not jurisdiction in these type of
15 cases and the Defendants have the burden to show there is
16 jurisdiction. That with regard to the Fact Sheets that are
17 either not filed or not completed, then we can't show that there
18 is a claim against those Defendants and so, therefore, those
19 cases should be remanded."

20 With regard to all the other Fact Sheets, we came
21 down to finding only one person out of those cases and that was
22 in the McManus case that appeared to have, based on the Fact
23 Sheet, diversity. And that was a Wisconsin resident, who was
24 exposed -- allegedly exposed to Silica in Wisconsin. And
25 probably that specific -- it's a guy named Mr. Winston.

Page 18

1 With regard to that Fact Sheet, still the Fact Sheet
2 didn't identify the specific Defendants against who he had
3 claims, so we say it should be remanded as well, but that's the
4 only person that we saw that could have an arguable basis for
5 diversity jurisdiction based on our review of the Fact Sheets
6 and that's one Plaintiff in McManus. With regard to that one
7 Plaintiff, we would say that, you know, this Court has
8 recognized in certain other unique situations in which you've
9 got -- like the Kirkland case, in which you had one Plaintiff
10 who needed to go back to somewhere else where it would be more
11 convenient, the Court asked that it be remanded to the Northern
12 District of Georgia. 3M would ask that that Wisconsin case be
13 remanded to an appropriate forum in Wisconsin.

14 But that's the only one out of the remaining cases
15 in which we filed Motions to Remand that we found somebody that
16 arguably would have diversity.

17 Now the opposition has been filed for our Motion to
18 Remand from Mr. Krutz's clients. He is going to -- he requested
19 that they do depositions, and use depositions in order to
20 establish jurisdiction.

21 THE COURT: You just want to get them back to
22 Mississippi where you've already got a Summary Judgment against
23 them; am I correct?

24 MR. MANUEL: Well, I don't know that -- we don't
25 have anything yet down there, but yeah, we believe that these

Page 19

1 cases do belong back to Mississippi, and we believe that the
2 Fact Sheets, which this Court has recognized as an adequate way
3 to look at jurisdiction --

4 THE COURT: Well, I suppose anybody can raise
5 jurisdiction at any time. Either it's there or it isn't.

6 MR. MANUEL: And I imagine that's what the case law
7 will say.

8 THE COURT: And just because you joined in the
9 removals of all these, I guess doesn't bar you from later say,
10 "never mind."

11 MR. MANUEL: Well, after we got Fact Sheets that
12 showed, you know, differences and more adequately explained --
13 I'm trying not to struggle with what I'm trying to say, but the
14 specific --

15 THE COURT: I know it's a struggle.

16 (Laughter)

17 MR. MANUEL: With more specific allegations against
18 those Defendants. When you actually said, "You've got to" --
19 "It's time for you to actually show who you are suing," and they
20 did that, then we showed that it was not -- there was not
21 complete diversity. And so that's why we raised the
22 jurisdictional motion at that time.

23 The problem with depositions, your Honor, you
24 addressed this in Order 29. We had the same issue with those
25 other cases that came up. There was a request to do depositions

Page 20

1 on those cases and the Court specifically in your Order -- as a
2 matter of fact, in Pages 207 through 209, addressed those
3 Requests for Depositions. And in that you said that first off,
4 there's a problem with time and the fact that you've got
5 numerous depositions at that time. In this case -- I mean, here
6 it's a lesser amount of depositions, but you've still got,
7 according to Forman Perry's Opposition, still 536. Now I
8 understand that's before some of these latest dismissals, but
9 it's still going to take a long time to go through and do
10 depositions based on jurisdiction.

11 But more significant, the Court addressed two
12 problems with the deposition process that I think still apply to
13 these later removed cases. First of all, the Court went back to
14 point out that the Federal Court has to assume that there's no
15 jurisdiction, that the burden is on the Defendants. And by
16 placing this deposition process in place, you may be switching
17 the burden to the Plaintiffs to have to prove that there is no
18 jurisdiction and that that's not proper.

19 And finally, your order made the point that it's
20 still speculation that these depositions are even going to show
21 that these people are going to come forth and say they don't
22 have a claim against a non-diverse Defendant because we thought
23 that's what the Fact Sheets were for, was to show who they were
24 suing. And so we came in here and said, "Well, we ought to look
25 at the Fact Sheets." And if the Fact Sheets aren't accurate,

1 then it may be that the Fact Sheets aren't accurate, but your
2 Honor said in your order that the appropriate form for deciding
3 what to do about inaccurate Fact Sheets is a Court with
4 competent jurisdiction, which we would argue would be the courts
5 in Mississippi. And we can definitely cross examine people and
6 bring Motions for Sanctions and do all that kind of stuff in
7 that court and there won't be any kind of question as to whether
8 those orders would be valid.

9 So that's why we don't believe that depositions are
10 appropriate relief to solve this jurisdictional problem. We
11 think that the Court ought to do exactly what it did in Order
12 29, use the Fact Sheet analysis. And in the cases that we've
13 laid out in our motions show that there is not diversity --

14 THE COURT: Do you want me to be -- your argument is
15 going to be consistent even though I'm not competent?

16 MR. MANUEL: Consistent? We think that you're
17 competent in cases that are properly before you, but we just
18 don't -- but we would ask that you be consistent and that's --

19 THE COURT: All right. Thank you.

20 MR. MANUEL: That's it.

21 THE COURT: I may go ahead and do the depositions
22 quickly. You've got -- the argument that Mr. Krutz's clients
23 have is that every time you noted -- 400 out of 900 or
24 something, you noticed depositions and 400 -- they dismissed 400
25 plaintiffs.

Page 22

1 MR. KRUTZ: Well, we didn't notice 400 depositions,
2 but every deposition we noticed so far have been dismissed and
3 since we have made it known to the Plaintiff lawyers that we
4 were going to ask you to let us depose those people, they have
5 agreed to dismiss over half of the cases and have implied that
6 more dismissals may be coming.

7 So what we would like to do, your Honor -- first of
8 all, that's the first time in this two years we've been here
9 that I've heard any Defendant say in written paper or from the
10 podium that they think there's any accuracy in those Fact
11 Sheets.

12 MR. MANUEL: Well, I'm not necessarily saying that.

13 MR. KRUTZ: You know, so I think you noticed along
14 in Order 29 that it was understandable we were suspicious about
15 the accuracy of the Fact Sheets and I think you also said that
16 we were entitled to discovery to try to meet our burden of
17 proving subject matter jurisdiction and that we were here today
18 for the purpose of coming up with a procedure that would
19 expedite that procedure.

20 THE COURT: For the cases I have left.

21 MR. KRUTZ: Exhibit --

22 THE COURT: Only for the ones that I've got left.

23 MR. KRUTZ: Yeah, those are done and gone.

24 THE COURT: Uh-huh.

25 MR. KRUTZ: And so what we want to do, your Honor,

Page 23

1 is first, we're working with some as we have the last weeks on
2 the Plaintiff lawyers to get these cases dismissed, as many as
3 possible. When that dust clears, we believe that we're going to
4 have a number of cases that we can easily do that we demand
5 related discovery on.

6 THE COURT: Well, I'm going to need a time limit on
7 that.

8 MR. KRUTZ: I figured you would.

9 THE COURT: A day, two days?

10 MR. KRUTZ: To do the depositions?

11 THE COURT: Why don't you just do --

12 MR. KRUTZ: We've got enough people here.

13 THE COURT: Why don't you just do one big Notice of
14 Deposition and notice them all for a certain week and see what
15 happens.

16 MR. KRUTZ: We'll do it.

17 THE COURT: Wouldn't that save you time and money
18 and everybody else and either they show up or they don't, one
19 after another. Do them in order. Give them a list, and those
20 are to be produced in that order.

21 MR. KRUTZ: We'll do that, your Honor.

22 Now as I understand it, one of the cases --

23 THE COURT: 30 days?

24 MR. KRUTZ: I'm sorry. Adams, one of the cases and
25 I've been talking to Mr. McMurtray. One of the cases, Adams,

1 was over 400 of the Plaintiffs in it. That as I understand it,
2 his Fact Sheets aren't even due until the end of this week, so
3 we don't even have the Fact Sheets yet. I think that's correct,
4 in fact.

5 MR. MCMURTRAY: Good morning. Patrick McMurtray for
6 the Plaintiffs in this.

7 That is correct. Plaintiff's Fact Sheets are not
8 yet due, although we have been filing them piecemeal. And we
9 also just on Friday, I believe, provided Mr. Krutz's office at
10 least 26 of those plaintiffs who those cases can be dismissed
11 and so we're working with his office on that.

12 THE COURT: So when you get them Friday, you can
13 notice depositions over the next couple of weeks.

14 MR. KRUTZ: We will do that, your Honor.

15 MR. MANUEL: Your Honor, my client will --

16 THE COURT: Object -- strongly object.

17 MR. MANUEL: That's right. That's right.

18 THE COURT: I'll put down that you --

19 MR. MANUEL: We just believe that --

20 THE COURT: -- that you fought. They had to carry
21 you out kicking and screaming.

22 (Laughter)

23 MR. MANUEL: That would be correct, your Honor. We
24 just do believe that after the deposition process, we're going
25 to come back and we're going to come back and we're going to be